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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
 )  
The Development of a National Framework ) RM 9474  
to Detect and Deter Backsliding to Ensure )  
Continued Bell Operating Company )  
Compliance with Section 271 of the )  
Communications Act Once In-Region )  
InterLATA Relief Is Authorized )

**AT&T REPLY COMMENTS**

Pursuant to the Commission's Public Notice, released February 5, 1999, AT&T Corp. ("AT&T") hereby replies to comments filed in response to the petition (the "Petition") by Allegiance Telecom, Inc. ("Allegiance") to establish a framework to detect and deter backsliding by incumbent local exchange carriers ("incumbent LECs").<sup>1</sup> The comments filed herein demonstrate that the Commission should address the critical issues raised by the Petition as soon as possible. However, the Commission need not establish a new rulemaking proceeding. Instead, these issues should be addressed in the context of the Commission's ongoing proceedings.

**I. INTRODUCTION**

The overwhelming majority of commenters support Allegiance's request that the Commission adopt rules to ensure incumbent LEC compliance with the obligations

<sup>1</sup> A list of the commenters is filed herewith as Appendix 1.

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List A B C D E

imposed by sections 251 and 271 of the Act.<sup>2</sup> Predictably, four regional BOCs – Ameritech, Bell Atlantic, BellSouth, and SBC – oppose the petition, variously alleging that the Commission lacks authority to issue such rules,<sup>3</sup> or that such rules are unnecessary in light of: (1) ongoing Commission proceedings,<sup>4</sup> (2) related activities by state commissions,<sup>5</sup> or (3) the BOC's voluntary efforts.<sup>6</sup> Each of these claims lacks merit.

An urgent need exists for Commission action now. As numerous commenters point out, incumbent LECs currently are doing all they can to cripple nascent local competition, and BOCs will lose any incentive they might have to open their local fiefdoms once they obtain in-region interLATA authority. The Supreme Court has made clear that the Commission has authority to issue rules such as those contemplated by the Petition, and the Commission should do so in the context of its existing proceedings. Such action by the Commission would not displace, but would rather complement, pro-competitive actions by state commissions.

## **II. COMMISSION ACTION IS NEEDED NOW.**

The comments filed by CLECs attempting to break into the local services arena graphically establish the need for Commission action now to ensure that incumbent LECs

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<sup>2</sup> CoreComm, CTSL, Hyperion, Intermedia, Joint Commenters, MCI WorldCom, MGC, Pac West, RCN, SCI, Telergy, and WinStar – as well as AT&T – all support Commission action.

<sup>3</sup> SBC at 6.

<sup>4</sup> Ameritech at 3-4, 6, 7.

<sup>5</sup> BellSouth at n.3; SBC at 2-5.

<sup>6</sup> Bell Atlantic at 10-11.

comply with their obligations under both section 251 and section 271 of the Act. As CoreComm notes, “BOCs will exploit every opportunity to renege on their statutory market opening duties.” CoreComm at 1. To date, “both subtle and not-so-subtle BOC tactics have resulted in delays and complications in getting competitive services to the customer.” CTSI at 4. At the same time, voluntary BOC commitments have proven nearly unenforceable. Intermedia at 2.<sup>7</sup> As one CLEC aptly notes, the BOC “‘bag of tricks’ is seemingly a bottomless resource.” SCI at 3.

This situation will only get worse once a BOC obtains in-region interLATA authority, because the BOC will lose any incentive it might have to comply with sections 251 and 271.<sup>8</sup> As MGC observes, it has witnessed first-hand the “ILEC backsliding, and the paralysis that necessarily results when ILECs have obtained regulatory goodies and have no incentive to address their shortcomings.” MGC at 4. Moreover, once a BOC gains interLATA authority “it would have a heightened incentive to discriminate against competing interexchange carriers.” Pac West at 2.

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<sup>7</sup> See also CoreComm at 3, 6-7 (BOCs and incumbent LECs have “numerous and often subtle opportunities to undermine the new entrant’s efforts;” the “plethora of anti-competitive BOC practices” includes unreasonable provisioning intervals, cumbersome order entry procedures, overly restrictive or unreasonably discriminatory interconnection and collocation practices, and restricted access to BOC-controlled rights of way and other key facilities); Joint Commenters at 2 (incumbent LECs have imposed poor ordering and provisioning, delayed installations and cutovers, missed appointments, OSS incompatibility, “and a host of other problems”); MGC at 3 (“local exchange competition is being needlessly hindered by the failure of RBOCs to dedicate adequate resources to complying with their obligations under section 271 of the Act”); Pac West at 3 (BOCs are attempting to obtain section 271 approval on the basis of “the least permissible compliance with the competitive checklist”).

<sup>8</sup> See Joint Commenters at 2; CoreComm at 3, 4, 8; Hyperion at 9; Intermedia at 4; MGC at 4-5; RCN at 2-3; Telergy at 2; WinStar at 7.

Although many commenters specifically address the need for rules with respect to BOCs, such rules must apply to all incumbent LECs.<sup>9</sup> No commenter seriously disputes the Commission's authority to adopt rules to ensure compliance with section 271 and prevent a BOC from backsliding after it has obtained in-region interLATA authority.<sup>10</sup> Yet, as MCI WorldCom and AT&T point out in their comments,<sup>11</sup> the Commission is charged with the duty to ensure compliance with section 251 as well, and the Supreme Court has made clear that "the [Commission] has rulemaking authority to carry out the 'provisions of this Act,' which include §§ 251 and 252."<sup>12</sup> In order to fulfill its role in ensuring that the benefits of local competition are available to all Americans, the Commission should develop rules applicable to all incumbent LECs.

AT&T agrees with the majority of commenters that clear, objective and verifiable performance standards, coupled with self-enforcing remedies, are necessary to prevent BOC backsliding after they have obtained in-region interLATA authority.<sup>13</sup> More

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<sup>9</sup> Joint Commenters at 5; MCI WorldCom at 21; MGC at 7;

<sup>10</sup> SBC appears to argue, however, that adoption of remedies other than those specifically outlined in § 271(d)(6) would exceed the Commission's authority under the Act. SBC ignores the fact that such remedies also would help ensure incumbent LEC compliance with section 251.

<sup>11</sup> AT&T at 2; MCI WorldCom at 6.

<sup>12</sup> AT&T Corp. v. Iowa Util. Bd., 1999 WL 24568 (at 6), \_\_\_ S.Ct. \_\_\_ (Jan. 25, 1999).

<sup>13</sup> See CoreComm at 4 ("clear and detailed performance standards and a well-defined and reasonably expeditious process for enforcement" are needed); CTSI at 2 ("Commission must promulgate appropriate rules" and "fashion appropriate remedies and penalties"); Hyperion at 8 ("identifying the precise penalties that will apply when backsliding occurs will provide the optimal deterrent"); Intermedia at 4 ("establishment of performance measures, complaint procedures, and remedies for nonperformance are critical"); Joint Commenters at 7 ("national performance

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importantly, such measures must be in place regardless of an incumbent LEC's 271 status in order to ensure that the incumbent is complying with the requirements of section 251, and to ensure that a BOC is complying with the competitive checklist before section 271 authority is granted.

Thus, Ameritech is wrong when it argues that compliance with the nondiscrimination provisions of sections 251 and 271 need not be addressed except in the context of an individual 271 application.<sup>14</sup> What Ameritech (and others) fail to recognize is that compliance with the Act is not optional. Congress did not create a "time out" so that incumbent LECs would be excused from complying with the Act until such time as an individual BOC feels the need to do so in order to support a 271 application. The Act mandated compliance as of February 8, 1996, and the Commission should issue performance measurement standards, and establish self-enforcing remedies, precisely to ensure such incumbent LEC compliance.

As the Commission's recent issuance of collocation rules in the Section 706

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standards, accompanied by clearly defined penalties should be established"); MCI WorldCom at 15 ("Commission should adopt minimum performance standards as rules"), 16 ("self-executing remedies" and "an expedited complaint procedure" are required); MGC at 6 ("both clear and verifiable standards and meaningful penalties are necessary to prevent backsliding"); Pac West at 5 ("verifiable national minimum standards" should be established); RCN at 5 ("verifiable minimum standards" combined with "monitoring and detection measures"); SCI at 7-8 ("national default minimum standards" required, including "swift, certain, and multifaceted penalties"); Telergy at 2 ("Commission should establish 'verifiable national minimum performance standards' and 'remedies to deter and counter BOC backsliding'").

<sup>14</sup> See Ameritech at 3.

Proceeding<sup>15</sup> demonstrates, the Commission need not establish new proceedings to address the issues raised in the Petition. Incumbent LEC OSS performance and comparative methodologies for assessing such performance are addressed in the Performance Measurements Proceeding.<sup>16</sup> The Commission should rule on the issues pending in that proceeding as soon as possible, and initiate a follow-on phase to deal with remedies for incumbent LEC performance failures, including BOC backsliding.

#### **IV. ACTION BY THE COMMISSION WOULD NOT DISPLACE THE ROLE OF THE STATES.**

AT&T agrees with other new entrants that the Commission should establish minimum national standards that permit states to impose more stringent requirements where necessary.<sup>17</sup> Such national standards are required to ensure that “individual interpretations of state commissions will not result in a patchwork of differing substantive results” (CTSI at 3), or “a crazy quilt of conflicting requirements” (SCI at 5). Moreover,

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<sup>15</sup> *“FCC Adopts Rules to Promote the Deployment of Advanced Telecommunications Services,”* Report No. CC 99-6, CC Docket No. 98-147 (Mar. 18, 1999).

<sup>16</sup> Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance, CC Docket No. 98-56, RM-9101, Notice of Proposed Rulemaking, FCC 98-72, 13 FCC Rcd. 12817 (1998) (“Performance Measurements Proceeding”).

<sup>17</sup> See CoreComm at 6 (national framework needed with minimum federal standards); Hyperion at 4 (“national default standards [that] would leave states free to experiment with more stringent backsliding measures”); Joint Commenters at 6 (Commission would provide states minimum benchmarks to use in developing their own backsliding measures); MCI WorldCom at 6 (“a national framework, establishing a minimum set of rules . . . , while leaving states free to adopt more stringent measures as appropriate”); MGC at 3 (“national framework” required); RCN at 4 (“rules of broad applicability” that will not foreclose states from “establishing supplementary backsliding safeguards”); SCI at 4 (“national minimum performance standards and procedures” that allow state commissions to develop “even more advanced

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many states have not yet addressed backsliding or lack the resources to do so. Hyperion at 4. See also MCI WorldCom at 7. Minimum federal standards would be invaluable in such situations.

**V. THE COMMISSION SHOULD ADOPT CLEARLY DEFINED AND SELF-ENFORCING REMEDIES AND PROCEDURES TO DEAL WITH INCUMBENT LEC NONCOMPLIANCE.**

New entrants agree that incumbent LECs must be incented to comply with their section 251 and section 271 obligations through clearly defined and significant penalties for noncompliance.<sup>18</sup> At the same time, many commenters have raised concerns regarding the suitability of the Commission's "rocket docket" for obtaining prompt relief when an incumbent LEC ceases to provide nondiscriminatory access to its facilities and services.<sup>19</sup> It is because of the unavoidable delays inherent in the adversary process that remedies for such noncompliance should be self-effectuating. As MCI WorldCom notes, "the automatic nature of self-executing remedies will spare CLECs (as well as BOCs) the cost of unnecessary litigation and delay, and will help reduce administrative burdens on the Commission." MCI WorldCom at 19. At the same time, a rigorously administered rocket docket should be available to rapidly resolve complaints under section 271, as well as

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approaches").

<sup>18</sup> See CoreComm at 9; CTSI at 4; Hyperion at 7-8; Intermedia at 3; Joint Commenters at 7-10; SCI at 6-7; MGC at 7 (penalties that "have a real deterrent effect are integral to the success of a national backsliding framework"); Pac West at 6; RCN at 5-6; SCI at 6-7 (remedies must be multifaceted and "swiftly and certainly applied").

<sup>19</sup> See CoreComm at 8; Hyperion at 6; Joint Commenters at 6; SCI at 6; WinStar at 9.


those situations that are not fully remedied by the self-effectuating procedures. Id.

### CONCLUSION

As the comments demonstrate, the Petition raises critical issues that the Commission should address as promptly as possible. AT&T believes, however, that initiating a new rulemaking is unnecessary, because these issues are better and more quickly resolved in the context of ongoing proceedings.

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Dated: March 23, 1999



**Appendix 1**  
**List of Commenters**

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AT&T Corp. ("AT&T")

Bell Atlantic ("Bell Atlantic")

BellSouth Corporation ("BellSouth")

CoreComm Limited ("CoreComm")

CTSI, Inc. ("CTSI")

Hyperion Telecommunications, Inc. ("Hyperion")

Intermedia Communications Inc. ("Intermedia")

MCI WorldCom, Inc. ("MCI WorldCom")

MGC Communications, Inc. ("MGC")

New York State Department of Public Services ("NYDPS")

Pac West Telecom Inc. ("Pac West")

RCN Telecom Services, Inc. ("RCN")

SBC Communications Inc. ("SBC")

State Communications, Inc. ("SCI")

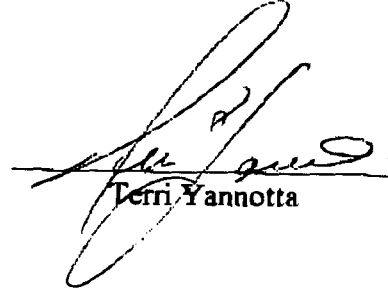
Telergy Network Services, Inc.; Telergy Central ("Telergy")

WinStar Communications, Inc. ("WinStar")

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**CERTIFICATE OF SERVICE**

I, Terri Yannotta, do hereby certify that on this 23<sup>rd</sup> day of March, 1999, a copy of the foregoing "AT&T Reply Comments" was served by U.S. first class mail, postage prepaid, to the parties on the attached Service List.



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March 23, 1999

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